



In the
Supreme Court of the United States

OCTOBER TERM, 1944

JOHN W. HAYS and SARAH R. HAYS,	} <i>Petitioners.</i>	} No.
<i>vs.</i>		
CATHERINE FARRINGTON, PARKER M. WOOD, WIL-	} <i>Respondents.</i>	
LIAM L. BECKTOLD, WALTER M. WARREN and		
LYMAN E. WARREN.		

*Petition for Writ of Certiorari to
Supreme Court of Missouri*

**BRIEF IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI.**

I.

Opinion of the Court Below.

The opinion has not yet been officially reported. It appears in 182 S. W. (2d) 186 (advance sheet), and pages 292 to 304, inclusive, of the Record. An application for rehearing of the opinion and to transfer the cause to the court en banc was denied without opinion.

II.

Jurisdiction.

1. The statutory provision is Judicial Code, Section 237b, as amended by Act of February 13, 1925, 43 Stat. 937 (U. S. C. tit. 28, section 344b).

2. The date of the judgment is July 3, 1944, on which date the Missouri Supreme Court affirmed (Rec., p. 304). A motion for rehearing and for transfer to the court en banc was duly filed (Sup. Rec., p. j) and was overruled September 5, 1944 (Rec., pp. 305, 306).

3. That the nature of the case and the rulings below bring the case within the jurisdictional provisions of Section 237b, *supra*, appears from the following.

III.

Statement of the Case.

In this case plaintiffs below sought specific performance of an earnest money contract entered into on the 3rd day of February, 1941, wherein the property in question was attempted to be sold to Catherine Farrington, one of the plaintiffs below, and a "straw party" for the other plaintiffs. The contract was signed by defendant below, Marie Halbrecht, who signed it as "record owner," and by Harry J. Gannon, who signed as "agent for the owner."

Prior to signing said earnest money contract said Harry J. Gannon had disposed of all right and interest which he had in said property to petitioner, John W. Hays, for a valuable consideration and had transferred the same by written assignment on the earnest money contract between Marie Halbrecht and James Sentenne and wife (R. p. 116 and Exhibit C, opposite p. 116) Marie Halbrecht

also signed said assignment, said contract having in it a provision reading as follows: "Deed to be made to Marie Halbrecht or assigns."

On January 6, 1941, Marie Halbrecht, at the direction of petitioner, John W. Hays, inserted the names of Lloyal M. Burton and Rosalyn R. Burton, his wife, in a deed which she gave to petitioner, John W. Hays, on December 16, 1940, when she received the deed to the property in question from Sentenne and wife. After their names had been inserted in said deed, the same was taken to the Burtons by petitioner Hays and they returned it to him with instructions to put it of record.

The inserting of the name of Burton and his wife in said deed was directed by petitioner, John W. Hays, in compliance with an agreement signed by him and said Lloyal M. Burton on the 20th day of December, 1940, wherein it was provided that Burton and his wife should take title to the entire tract of land and hold the same until it should be surveyed and then deed the western two and one-half acres thereof to petitioners, as husband and wife, and retain the eastern two and one-half acres of said land as their own, as husband and wife. The cumbances, taxes and upkeep on or accruing against said land were to be paid equally by the parties (R. pp. 137, 138). Mrs. Burton on said 20th day of December paid petitioner, John W. Hays, the sum of \$249.70 as part purchase money on the property (R. p. 140).

The claim of federal constitutional rights was specifically set up in a motion for a new trial duly filed in the Circuit Court of St. Louis County, Missouri, after the trial Court had upheld the contract between Burton and Hays, so far as the property rights of Burton and his wife were concerned, but had denied the same rights to the petitioners under said contract and decreed specific performance against them under similar circumstances to

those obtaining with reference to Burton and his wife, the other beneficiaries thereunder. Said claim to federal rights on the part of petitioners is contained in numbered paragraphs 7, 10 and 16 of said Motion for a New Trial (R. pp. 280-282), and states that the Court denied the petitioners the equal protection of the laws and deprives petitioners of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States, and contrary to the Fifth Amendment thereto; and further charges that the decree of the Court nullifies the Statute of Frauds of Missouri.

The claim of federal constitutional rights was first specifically set up in the motion for a new trial filed by petitioners (Rec., pp. 278 to 282) and renewed at every stage of the case (Rec., pp. 289 to 291). The trial Court rendered its decree and overruled said motion for a new trial without opinion against the rights claimed (Rec., pp. 271-278). On appeal the Supreme Court of Missouri, although it was bound to consider and pass upon the claim to federal rights which were again set up in the assignment of errors, Brief and oral argument, in order to render its opinion in the case, did not mention said claimed federal rights in its opinion (Rec., pp. 292-304).

The federal right claimed is: (a) That the equal protection of the laws was denied to petitioners in that their vested rights to property under an executed trust agreement (Rec., pp. 137, 138), creating an equitable estate, and naming petitioners as beneficiaries thereunder, was held by the Court to be void and of no effect so far as these petitioners are concerned, while the identical rights of other beneficiaries thereunder were upheld, under similar circumstances, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States; and (b) That petitioners were deprived of their

property without due process of law, contrary to said Section 1 of the Fourteenth Amendment, and to the Fifth Amendment to said Constitution, and contrary to the Constitution of Missouri, Section 30 of Article II, and contrary to the statute of frauds of Missouri, and of the well-settled equity rules of law sanctioned by the highest courts of Missouri for many years; but that said statutes and said rules of equity were applied to the rights of other beneficiaries under said trust agreement, and said constitutional rights of said other beneficiaries were safeguarded under the same terms of said agreement, and under circumstances similar to those of petitioners.

Petitioners also charge that they were thus discriminated against because the purpose of said action was to prevent people of the colored race, of which petitioners are members, from living in property along said Big Bend Road, opposite Oakhill Cemetery; that the portion of said property to which petitioners are entitled under the terms of said agreement and as beneficiaries of said trust contains the dwelling house and other buildings on said tract, and lies along said Big Bend Road for its entire frontage, while that to which said Lloyal M. Burton and Rosalyn R. Burton are entitled under said agreement contains no house, and lies mostly behind other property, more than 200 feet away from said Big Bend Road (Rec. opposite p. 116, Plaintiffs' Exhibit C; also Rec., pp. 90, 91 and 74, 75).

Petitioners charge that the trial Court aided this scheme on the part of plaintiffs by denying petitioners their said federal constitutional rights and by nullifying the statute of frauds of Missouri and refusing to apply the well-settled principles of equity to the consideration of the rights of petitioners as beneficiaries under said trust agreement; and that the Supreme Court of Missouri, in affirming said decree of the trial Court, denied to peti-

tioners the equal protection of the laws and deprived them of their property without due process of law, contrary to said amendments to the Constitution of the United States.

IV.

Errors Below Relied Upon Here; Summary of Argument.

The points petitioners urge on this Court are in summary form as follows:

1. The State of Missouri denied the petitioners the equal protection of the laws by divesting them of property rights which had become vested in them as beneficiaries under a trust agreement in the same proceedings and under similar circumstances in which similar rights of other beneficiaries under said agreement were upheld and confirmed.

2. The State of Missouri deprived the petitioners of their property without due process of law by failing to apply well-settled principles of equity jurisprudence, which had been established by consistent rulings of the highest court in Missouri over a long period of years, to the facts and circumstances in evidence in this case relating to the property rights of the petitioners.

3. The State of Missouri deprived petitioners of their property rights without due process of law by failing to apply and enforce the Statute of Frauds, a valid and judicially approved law of the State of Missouri, providing, that no contract for the sale of lands by an agent shall be binding upon the principal, unless such agent is authorized in writing to make said contract; and that no action shall be brought upon any agreement for the sale of lands, or an interest in or concerning them, unless the agreement upon which the action shall be brought, or some memorandum thereof, shall be in writing and signed

by the party to be charged therewith, or by some other person by him thereto lawfully authorized.

4. The State of Missouri deprived the petitioner, Sarah R. Hays, of her property rights without due process of law by awarding said rights to the respondents without compensation therefor to said petitioner.

5. The decree of the Court, in effect, used the power of the State of Missouri to assist in consummating a scheme unlawfully to prevent petitioners, solely because of their race and color, from owning and occupying property fronting on a public street and not covered by any restrictive covenants against the use and ownership thereof by members of the Negro or colored race.

6. Specific performance on the ground of equitable estoppel cannot lawfully be decreed in reference to property owned by the entirety where one of the owners had no knowledge of the existence of her property rights at the time of the negotiations for the sale thereof, or of said negotiations, and did not concur in or ratify the acts of the other owner by the entirety.

POINT I.

The State of Missouri denied petitioners the equal protection of the laws by divesting them of property rights which had become vested in them as beneficiaries under a trust agreement in the same proceedings and under similar circumstances in which similar rights of other beneficiaries under said agreement were upheld and confirmed.

The rights of all of the defendants below claiming an interest in the lands in question, including the petitioners herein, were determined by the agreement signed between John W. Hays and Lloyal M. Burton, December 20, 1940 (R. pp. 137, 138), whereby Burton and his wife were

to take title to the entire tract and hold the same until a survey thereof should be made and then deed the western two and one-half acres thereof to the petitioners herein, as husband and wife, retaining for the Burtons, as husband and wife, the eastern two and one-half acres of said tract, and assuming and agreeing to pay the incumbrance, taxes and expenses of upkeep on said tract, each party by the entirety one-half thereof. When that agreement was signed by John W. Hays and Lloyal M. Burton, the trust provided for therein became irrevocable except by the consent of all the beneficiaries thereunder.

Perry on Trusts, Vol. 1, Secs. 259, 268.

Roberts v. Taylor, 300 Fed. 257, 260.

McPheeters v. Scott Co. Bank (Mo. Sup.), 63 S. W. (2d) 456; and cases cited.

In re Soulard's Estate, 141 Mo. 642, 662.

Under the above cited authorities, especially those decided by the Supreme Court of Missouri, it did not make any difference whether the petitioner, Sarah R. Hays, knew she was a beneficiary under the agreement between her husband and Lloyal M. Burton or not. Her property rights in the lands in question became vested immediately upon the execution of said agreement and the actions of Burton in carrying out its provisions. It follows that the occupation of the premises by Burton and his wife was not only as owners of the portion of the property which belonged to them under the agreement, but also as trustees for the other beneficiaries thereunder, and with the duty to preserve said property and protect the rights of the other beneficiaries therein.

Since the deed from Marie Halbrecht to Lloyal M. Burton and his wife (R. pp. 104, 105) had not been placed of record before the earnest money contract signed by Marie Halbrecht and H. J. Gannon, February 3, 1941

(R. pp. 45, 48), all of the beneficiaries under the agreement of December 20, 1940, were in the same situation regarding their ownership of or interest in said property, so far as notice to prospective purchasers were concerned. The unrecorded deed to the Burtons did not protect them from purchasers of the property any more than the other beneficiaries under said agreement were protected.

Secs. 3426 and 3427, R. S. of Mo. 1939.

All of said beneficiaries were in the same situation as regards the question of equitable estoppel against them, except that the petitioner, Sarah R. Hays, did not have any knowledge of the existence of the trust agreement (R. pp. 211, 212), nor did she know of the negotiations being carried on for the purchase of the property by agents of the respondents (R. pp. 58, 217).

Under the facts disclosed by the evidence in this case, none of the beneficiaries under said trust agreement could be estopped to assert their ownership and right to an interest in said property, because respondents had knowledge of the true ownership of said property and knowledge of facts sufficient to put them on inquiry, and they failed to make such inquiry which would have disclosed the true ownership of the property, and that Marie Halbrecht did not own the same, and that neither she nor Harry J. Gannon had any authority whatsoever to make a contract for the sale of the same.

Crary v. Dye, 208 U. S. 515.

Preuse v. Schmidt, 156 S. W. (2d) 919.

Woodbury v. Conn. Mut. Life Ins. Co., 166 S. W. (2) 552, 555.

Johnson v. Moore, 143 S. W. (2d) 254, 256.

McBride R. Co. v. Grace, 15 S. W. (2d) 957-960.

Shell v. Conrad, 153 S. W. (2d), loc. cit. 387, 388.

The decree of the Circuit Court and the affirmance of the same by the decision of the Supreme Court of Missouri, under the circumstances in evidence in this case and the applicable principles of law announced in the foregoing authorities, constitutes the denial of the equal protection of the laws to the petitioners on the part of the State of Missouri.

Louisville Gas Co. v. Coleman, 277 U. S. 32, 37.

Coolidge v. Long, 282 U. S. 582, 597.

16 C. J. S., Sec. 567, p. 1141.

It is submitted that the situation here is that, under the same or similar conditions, differing only in degree but not in kind, the State of Missouri has confirmed and upheld property rights of some of the beneficiaries under a trust agreement which is the source of the rights of all the beneficiaries, while denying those identical rights to others of them in the same proceedings.

POINT II.

The State of Missouri deprived the petitioners of their property without due process of law by failing to apply the well-settled principles of equity jurisprudence which had been established by consistent rulings of the highest Court in Missouri over a long period of years, to the facts and circumstances in evidence in this case relating to the property rights of petitioners.

"Due process of law in each particular case means an exertion of the powers of government as the settled maxims of law permit or sanction, and under such safeguards for the protection of individual rights as these maxims prescribe for the class of cases to which the one being dealt with belongs."

Story on the Constitution (5th Ed.) Sec. 1945.

The prohibition against depriving any person of life, liberty or property without due process of law applies to each of the branches of the State government.

Chicago, Burlington & Quincy R. R. Co. v. Chicago,
166 U. S. 226, 227.

The Supreme Court will not hesitate to exercise its jurisdiction to enforce this constitutional guarantee.

Buckhalter v. New York, 319 U. S. 427, 429.

POINT III.

The State of Missouri deprived the petitioners of their property without due process of law by failing to apply the Statutes of Frauds, a valid and judicially approved law of the State of Missouri, providing that no contract for the sale of lands made by an agent shall be binding upon the principal, unless such agent is authorized in writing to make said contract; and that no action shall be brought upon any agreement for the sale of lands, or an interest in or concerning them, unless the agreement upon which the action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized.

Rev. Stat. of Missouri 1939, Sec. 3354.

POINT IV.

The State of Missouri deprived the petitioner, Sarah R. Hays, of her property rights without due process of law by decreeing specific performance against her and awarding her property to the respondents without compensation therefor to said petitioner.

See: Decree of Circuit Court (R. pp. e, f).

Opinion of Supreme Court (R. pp. 302-304).

POINT V.

The decree of the Court, in effect, used the power of the State of Missouri to assist respondents in consummating a scheme unlawfully to prevent petitioners, solely because of their race and color, from owning and using property fronting on a public highway and not covered by any restrictions against them, on account of their race and color, they being members of the Negro or colored race, contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States.

The evidence shows that the western two and one-half acres of the land in question fronts in its entire length along Big Bend Road and that the dwelling house and all the out-buildings and tourist cabins are on this portion, while the eastern two and one-half acres of the tract lie mostly behind other property, about two hundred feet from said road, and have no buildings thereon (R. pp. 137, 138).

The Court will take judicial notice of the fact that property abutting for several hundred feet along a public street, on which are located a brick dwelling, and other buildings, is worth more than property not abutting said street and having no buildings thereon, even when said vacant property joins said western portion of the same tract of land.

POINT VI.

Specific performance based on equitable estoppel cannot lawfully be decreed in reference to property owned by the entirety, where one of the owners had no knowl-

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edge of her rights in said property, or of the negotiations therefor, and did not concur in or ratify the acts of the other owner in reference thereto.

Hernandez v. Prieto, 162 S. W. (2d) 829, 831.

Wilson v. Power, 155 S. W. (2d) 502.

Magulson v. Stern, 148 S. W. (2d) 144.

Hartford Fire Ins. Co. v. Bleedson, 132 S. W. (2d) 1066.

Baker v. Lamar, 140 S. W. (2d) 31.

30 C. J., p. 569, par. 102.

CONCLUSION.

We respectfully submit that the authorities cited under the foregoing points amply state the equity rules of decision which should have been applied to the evidence in this case. There is no doubt about both Rupp and Bernine having knowledge of acts sufficient to have put them on inquiry. Burton and his wife lived across the road two hundred and fifty feet from where Bernine went in the cemetery gate each day. They were trustees under the agreement with petitioner John W. Hays, and in charge of the property, both as beneficiaries under that agreement and as trustees for Hays and his wife, with the duty to protect and safeguard their interests in the property. If, as the Court says in its opinion, "Burtons would, no doubt, have reasonably disclosed that they were in possession and claimed full legal title under an unrecorded deed from Marie Halbrecht," that would have been sufficient to notify the respondents that Marie Halbrecht was not the owner. But the law presumes a trustee will do his duty, not that he will fail to disclose his cestui que's interest when he finds a prospective buyer of the trust property making inquiry as to its ownership. Mr. Rupp was so little concerned about who owned the property that, although the earnest money contract bore the strangest wording he had seen, he never even asked Gannon to see the power of attorney he testified Gannon told him he had (R. pp. 40, 41). Neither did he inquire, when he saw that Marie Halbrecht was a woman, and not "a man in the office," to whom Gannon had sold his interest.

"Notice is the equivalent of knowledge of all that would be learned by reasonable inquiry."

Johnson v. Moore, 143 S. W. (2d) 254, 256, and cases cited.

The only difference between the circumstances of the four beneficiaries under the agreement is that of lack of information on the part of petitioner, Sarah R. Hays, and she received nothing at the hands of the Court, although her interest became vested at the same time as that of the other beneficiaries.

Was she denied the equal protection of the law by the courts of Missouri? If so, the prohibition in the Fourteenth Amendment has been overridden by the State.

Was she deprived of her property without due process of law? If so, then the other prohibition in the amendment mentioned has been overridden, as well as that in the Fifth Amendment. We believe that both of these questions must be answered in the affirmative. If answered affirmatively, it follows that this Court has jurisdiction and, as said in *Buckhalter v. New York* (319 U. S. 429):

"Where this requirement has been disregarded, the Court will not hesitate to exert its power to enforce the constitutional guarantee."

That was a criminal case, but the amendment does not distinguish between criminal and civil proceedings as regards the prohibition. It says: "Life, liberty or property," and this Court has enforced that prohibition in all manner of cases.

The Burtons had as much notice of what was going on as Hays had. He told them. He was their agent to file the deed from Marie Halbrecht. But passing all that: was the husband of petitioner, Sarah R. Hays, and they held by the entirety under the trust agreement. His acts, not concurred in by her, or ratified, could not dispose of her property or bind her in reference thereto in any manner.

We respectfully submit that the constitutional prohibitions have been breached in the instances pointed out in the Brief, and that the authorities cited enunciate rules of decision which sustain our contention. We believe that the considerations of public justice require that this Court issue its writ of certiorari, and review and reverse the decision of the Missouri Supreme Court in this case.

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